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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:
PG&E CORPORATION
- and -
PACIFIC GAS AND ELECTRIC
COMPANY,
Debtors.

Bankruptcy Case
No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

☐ Affects PG&E Corporation
☐ Affects Pacific Gas and
Electric Company
☒ Affects both Debtors

Date: June 8, 2020
Time: 9:30 a.m.
Ctvm: 17
Judge: Dennis Montali

**CALIFORNIA STATE AGENCIES' OBJECTION TO RESPONSE OF FIRE VICTIM
TRUSTEE TO REMAINING OBJECTION REGARDING FIRE VICTIM TRUST
DOCUMENTS [DOCKET NO. 7873] AND AD HOC SUBROGATION GROUP LIMITED
OPPOSITION [DOCKET NO. 7891]**

1 The California Department of Forestry and Fire Protection, California Department of
2 Toxic Substances Control, California Governor's Office of Emergency Services, California
3 Department of Veterans Affairs, California State University, California Department of Parks and
4 Recreation, California Department of Transportation, and California Department of
5 Developmental Services (the "**California State Agencies**") hereby file this reply to (i) the
6 *Response of the Fire Victim Trustee to the Remaining Objection of the California State Agencies*
7 *Regarding Fire Victim Trust Documents* [Doc. No. 7873] ("**FVT Response**") and (ii) the *Limited*
8 *Opposition of the Ad Hoc Group of Subrogation Claim Holders to the California State Agencies'*
9 *Remaining Issues Regarding Confirmation of Joint Chapter 11 Plan....* [Doc. No. 7891] ("**Ad**
10 **Hoc Subrogation Group Response**").¹

11 **REPLY TO FVT RESPONSE**

12 1. The Fire Victim Trustee's arguments in the FVT Response ignore the Court's
13 order approving the government settlement agreements. *See Order Pursuant to 11 U.S.C. §§*
14 *363(b) and 105(a) and Fed. R. Bankr. P. 9019 (I) Approving Settlements with Federal and State*
15 *Agencies of Government Agency Fire Claims, and (II) Granted Related Relief* [Dkt. No. 7399]
16 (the "**Order**"). Under the Order, those settlement agreements are "binding upon" the Fire Victim
17 Trustee and Claims Administrator. *See Id.* at ¶ 2; *see also Id.* Exhibit B (State Agency Settlement
18 § 3.11 [Trustee would be bound]) and Exhibit A (Federal Agency Settlement § 3.11 [same]).
19 Although the Fire Victims Trustee argues that his counsel had minimal involvement in the
20 negotiations (which is not accurate), there is no doubt that both the Fire Victim Trustee and
21 Claims Administrator had capable lawyers that could have responded to the Debtors' motion to
22 approve the government settlements with any concerns about the terms of the settlement
23 agreements, including the releases. Collateral attacks on a final order are not allowed. As the
24 TCC, correctly noted:

25 [A 9019 order] is a final order that is binding on all parties in interest in these
26 Cases. *In re A&C Properties*, 784 F.2d 1377, 1380 (9th Cir. 1985) (noting

27 ¹ Counsel for the United States of America has authorized the undersigned to represent that the
28 United States of America joins this Reply. Capitalized terms not otherwise defined herein shall
have the meaning attributed in the Debtors' Plan.

1 finality of 9019 order). ... A party in interest in a bankruptcy case is bound by a
2 9019 ruling even if they opposed the settlement. In *Red River Res., Inc. v.*
3 *Collazo*, 2015 U.S. Dist. LEXIS 46117, 2015 WL 1846498 (N.D. Cal. Apr. 8,
4 2015), the court explained that, “for res judicata purposes, the fact that [a creditor
5 in the case] declined to be a settling party to the Global Settlement does not free
him of all court-approved terms of the agreement, which bind him whether he was
a party to the settlement or not, because he was a party in interest to the
Bankruptcy Court's order. 2015 U.S. Dist. LEXIS 46117 at *20-21, 2015 WL
1846498, at *9.

6 *Objection of Official Committee of Tort Claimants to Designation of Exhibits filed by GER*
7 *Hospitality, et al.* [Doc. No. 7522] at p. 1. The government claim settlements gave the
8 government claimants “allowed claims.” Order, Exhibit B at § 2.2(a); *id.*, Exhibit C at §§ 2.2(b)
9 and 2.2(c). Requiring a release of a third party as a condition to being paid an allowed claim
10 violates the established law in this Circuit on nonconsensual third-party releases. *See In re*
11 *Lowenschuss*, 67 F.3d 1394, 1401-02 (9th Cir. 1995) (nonconsensual releases of non-debtors are
12 not permitted); *In American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989) (same).

13 2. The California State Agencies are differently situated than other Fire Victims in
14 many ways, so releases to the Trustee and his professionals are particularly inappropriate for
15 them. First, they already negotiated specific settlement terms, including specifically negotiated
16 limited releases, with the TCC and the Fire Victim Trustee and Claims Administrator. Second,
17 the California State Agencies are regulators of operations in the State of California; government
18 regulatory agencies do not give releases for future acts, which is why the releases in the
19 settlement agreements were negotiated as limited releases. Third, individual fire victims that
20 settle with the Trust will, presumably, settle for a fixed amount. In contract, to preserve the trust
21 corpus for individuals, government fire claimants agreed to be paid from interest, stock
22 appreciation and litigation proceeds. At the time they are offered payment by the Trustee
23 (conditioned on them granting a release to the Trustee) the California State Agencies will not
24 know exactly how much they are owed. They should not, prior to being paid, have to waive
25 claims. Finally, unlike individual fire victims, the California State Agencies timely raised an
26 objection to the additional release requirement, as did the United States of America.

27 3. Even the more limited release proposed by the Trustee’s counsel would eliminate
28 rights that the California State Agencies specifically bargained for. The State Agency Settlement

1 provides that “if the Trustee fails to perform under Sections 2.2(b) and 2.2(c) of this Agreement,
2 the affected Agency (or Agencies) may seek to enforce this Agreement by motion to the
3 Bankruptcy Court” Order, Exhibit B, § 2.2(e). Even the new release proposed by the Fire
4 Victims Trustee might strip the California State Agencies of their rights to enforce their
5 Settlement Agreement as a condition of being paid anything.

6 4. The Fire Victim Trustee’s claim that additional releases are “necessary” ignores
7 the very low standard of care applicable to the Trustee’s and Claims Administrator’s (and their
8 professionals) conduct under the Fire Victim Trust Agreement. *See*, Plan Supplement, Exhibit D
9 at Docket No. 7037 (Fire Victim Trust Agreement § 5.4 (immunity from liability other than
10 willful misconduct, bad faith or fraud), § 5.5 (duties to the Trust Beneficiaries are eliminated to
11 the fullest extent permitted by applicable law, except loyalty and care), § 5.7 (Trust
12 indemnification of Trustee, Claims Administrator and professionals)). No doubt the Fire Victim
13 Trustee and Claims Administrator will be fully insured for their roles in this matter, as well.

14 5. The California State Agencies incorporate their arguments on this issue in their
15 *California State Agencies’ Objection to Confirmation of Debtors’ and Shareholder Proponents’*
16 *Joint Chapter 11 Plan of Reorganization Dated March 16, 2020 [Docket No. 6320]* filed at
17 Docket No. 7281 and joined by the United States of America.²

18 **REPLY TO AD HOC SUBROGATION GROUP RESPONSE**

19 6. The requirement of Governmental Units such as the California State Agencies and
20 the United States of America to provide the release of the made whole doctrine was specifically
21 objected to and argued by counsel for the United States of America at the hearing on October 23,
22 2019. At that hearing, counsel for the Ad Hoc Group of Subrogation Holders (Mr. Feldman)
23 represented to the Court the “easy answer” that the defined term IP Claims to which the release of
24 the made whole doctrine applies does not include Governmental Units. The Amended and
25

26 ² Other than the objection to the additional involuntary releases, the objections to the FVTA and
27 CRP appear to be resolved, subject to the California State Agencies and the United States of
28 America reviewing the fully revised FVTA and CRP and with such rights reserved. The Debtors,
TCC or Trustee should file the revised FVTA and CRP with redlines showing changes for all
parties in interest to review and comment before court approval in connection with approval of a
final confirmation order.

1 Restated Restructuring Support Agreement filed at Docket No. 4554 has the following definition:
2 “‘IP Claims’ means any Wildfire Claim that is not a Public Entities Wildfire Claim, a
3 Subrogation Claim or any Wildfire Claim asserted by any Governmental Unit (as defined in
4 section 101(27) of the Bankruptcy Code).” *Notice of Filing of Amended and Restated*
5 *Restructuring Support Agreement* at page 5. Thus, Ad Hoc Subrogation Group limited objection
6 is misplaced and should be overruled.³

7 **RESERVATION OF RIGHTS**

8 Neither this pleading nor any subsequent appearance, pleading, proof of claim, claim or
9 suit is intended or shall be deemed or construed as:

10 a. a consent by the California State Agencies to the jurisdiction of this Court
11 or any other court with respect to proceedings, if any, commenced in any case against or
12 otherwise involving the California State Agencies;

13 b. a waiver of any right of the California State Agencies to (i) have an
14 Article III judge adjudicate in the first instance any case, proceeding, matter or controversy as to
15 which a Bankruptcy Judge may not enter a final order or judgment consistent with Article III of
16 the United States Constitution, (ii) have final orders in non-core matters entered only after de
17 novo review by a District Court Judge, (iii) trial by jury in any proceeding so triable in the
18 Chapter 11 Cases or in any case, controversy, or proceeding related to the Chapter 11 Cases,
19 (iv) have the United States District Court withdraw the reference in any matter subject to
20 mandatory or discretionary withdrawal, or (v) any and all rights, claims, actions, defenses, setoffs,
21 recoupments or remedies to which the California State Agencies are or may be entitled under
22 agreements, in law or in equity, all of which rights, claims, actions, defenses, setoffs and
23 recoupments are expressly reserved hereby; or

24 c. a waiver of any objections or defenses that the State of California, the
25 California State Agencies or any other agency, unit or entity of the State of California may have
26 to this Court’s jurisdiction over the State of California, the California State Agencies or such

27 ³ The discussion of this issue appears at 3:14 to 3:21 in the audio file at Docket No. 4433. The
28 California State Agencies are obtaining the transcript and will submit the relevant pages as soon
as it is available.

1 other agency, unit or entity based upon the Eleventh Amendment to the United States
2 Constitution or related principles of sovereign immunity or otherwise, all of which objections and
3 defenses are hereby reserved.

4 Dated: June 12, 2020

Respectfully submitted,

5 XAVIER BECERRA
Attorney General of California
6 MARGARITA PADILLA
Supervising Deputy Attorney General

7
8 By: /s/ Paul J. Pascuzzi
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11 Fire Protection, California Department of Toxic
Substances Control, California Governor's Office of
12 Emergency Services, California Department of Veterans
Affairs, California State University, California
13 Department of Parks and Recreation, California
Department of Transportation, and California
14 Department of Developmental Services

1 **PROOF OF SERVICE**

2 I, Susan R. Darms, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 500 Capitol Mall, Suite 2250, Sacramento, CA
5 95814. On June 12, 2020, I served the within document(s):

6 **CALIFORNIA STATE AGENCIES' OBJECTION TO RESPONSE OF FIRE VICTIM**
7 **TRUSTEE TO REMAINING OBJECTION REGARDING FIRE VICTIM TRUST**
8 **DOCUMENTS [DOCKET NO. 7873] AND AD HOC SUBROGATION GROUP LIMITED**
9 **OPPOSITION [DOCKET NO. 7891]**

10 By Electronic Service via CM/ECF to all registered participants in this case as of June 12, 2020.

11 /s/ Susan R. Darms

12 SUSAN R. DARMS